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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CALL CENTER SERVICES, INC., Plaintiff and Respondent, v. BERNARD PARKS FOR SUPERVISOR et al., Defendants and Appellants.	B235725 (Los Angeles County Super. Ct. No. BC 426785)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Kronstadt and Barbara M. Scheper, Judges. Affirmed.

Harris & Associates, John W. Harris, and Giselle V. Dhallin for Defendants and Appellants.

Law Office of Michael E. Kinney and Michael E. Kinney for Plaintiff and Respondent.

INTRODUCTION

Bernard Parks and Bernard Parks for Supervisor, an unincorporated entity established to support Parks's campaign to become a Los Angeles County Supervisor (the Campaign), appeal from a judgment in favor of respondent Call Center Services, Inc. Appellants contend (1) the trial court erred in granting respondent's motion for summary judgment on the Campaign's liability for breach of contract, (2) the court erred in finding, after a bench trial, that Parks was individually liable on the contract, and (3) the trial court erred in denying appellants' motion for a new trial. Finding no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *Complaint*

On November 23, 2009, respondent filed a complaint for damages against Parks and the Campaign. In the complaint, respondent asserted a cause of action for breach of contract. Respondent alleged that it "entered into an oral contract with Defendant [Campaign] whereby Plaintiff agreed to make telephone calls on behalf of and as directed by Defendants, and Defendant [Campaign] agreed to pay Plaintiff for those telephone calls." "The telephone calls which were the subject of the contract, as aforesaid, were for the direct benefit of Defendant [Parks], who was a candidate for the Los Angeles County Board of Supervisors. Defendant [Parks] had notice of the contract and the telephone calls, and made recordings of his own voice for use in the telephone calls." Plaintiff alleged it fully performed the contract, but "[t]here remains due and owing from Defendants, and each of them, the sum of $49,924.76 in principal, plus interest from and after May 28, 2008, at the statutory rate."

Respondent also asserted a cause of action for account stated. It alleged that "[w]ithin the last four (4) years, in the County of Los Angeles, State of California, an account was stated in writing by and between Plaintiff and Defendants wherein it was agreed that said Defendants, and each of them, became indebted to Plaintiff in the sum of $49,924.76, plus interest on that sum at the statutory rate until paid." In its prayer for relief on all causes of action, respondent sought damages of $49,924.76, plus applicable interest and costs.

On January 21, 2010, appellants filed an answer, generally denying the allegations in the Complaint. On the same day, they filed a cross-complaint to recover $5,000 mistakenly paid to respondent. Respondent filed an answer, generally denying the allegations in the cross-complaint.

B. *Motion for Summary Judgment*

On August 6, 2010, respondent filed a notice of motion and motion for summary judgment on its complaint against appellants. In the motion, respondent contended the Campaign "entered into an oral contract with Plaintiff whereby Plaintiff made telephone calls for the Parks campaign. Plaintiff performed about $55,000 worth of work for the Parks campaign, but was only paid $5,000." Respondent further contended that Parks was individually liable for the debts of the Campaign.

In support of its motion for summary judgment, respondent submitted a declaration by its president, Kris Schwenkmeyer. In her declaration, Schwenkmeyer stated that "[i]n Spring 2008, I was contacted by Andrew Westall. Mr. Westall told me that he was working for the BERNARD PARKS FOR SUPERVISOR campaign, and that [the Campaign] was interested in using the services of Call Center Services, Inc. in the campaign. I told Mr. Westall that Call Center Services, Inc. was willing to perform services for the campaign, and I told

Mr. Westall what we charged: $0.08 to 0.10 for each message delivered by robo-call, depending on the length of the message; $0.60 for each contact by live phoning in English; $0.70 for each contact by live phoning using only bilingual phoners; $0.08 for each 'second question' asked by a live phoner (for example, if the phoner is to determine the voter's preference and whether the voter will display a lawn sign); $0.15 for 'verification' (a verification by a supervisor to be certain that the voter is really committed to take some action like displaying a lawn sign)." Schwenkmeyer further stated that Westall requested that respondent proceed to perform services, that the Campaign provided respondent with "the scripts to be used in connection with the live phoning," that the Campaign provided respondent with "recordings to be used in connection with the robo-calls," that respondent did so, that respondent billed the Campaign for its services (both robocalls and live phoning), that respondent was paid $5,000 by the Campaign, and that there remained an outstanding balance of $49,924.76.

Respondent also submitted a declaration by Westall in which he stated that he worked as a volunteer for the Campaign in 2008, that he had personal contact with Parks about the services provided by respondent, that "Mr. Parks wanted the robocalls to be made, and recorded his own voice for use in the robocalls," and that "Parks personally contacted other elected officials to convince them to record messages to be used in the robocalls being placed by Call Center Services, Inc."

In addition, respondent submitted a declaration by Herb Wesson, III, the field director for the Campaign in 2008. In his declaration, Wesson stated that he was "personally involved in the decision to retain Call Center Services, Inc.," that "Parks decided that the campaign should utilize robocalls," that Wesson "thought the campaign should use Call Center Services, Inc. to make live voter identification calls to white voters on the west side of the district because I knew

the company had a good reputation," that he recommended respondent to Parks and Parks approved, that "Parks recorded his own voice for use in the robocalls," that Parks "personally contacted other elected officials and asked them to make similar recordings for the robocalls," and that "no check over the amount of $500 was allowed to go out until and unless Bernard Parks or his son Bernard Parks Jr. personally approved it."

Appellants filed an opposition, contending they did not enter into a contract with respondent because neither Wesson nor Westall had ostensible or actual authority to enter into an oral contract with respondent. Appellants also contended there was a triable issue of material fact as to the existence of an account stated.

Respondent filed a reply, contending there was no triable issue of material fact on the account stated cause of action because: (1) respondent sent invoices to the Campaign; (2) the Campaign paid $5,000 of the amount shown on the invoices; (3) the Campaign advised Wesson and Westall that respondent would be paid; (4) the Campaign filed a formal campaign finance form on July 31, 2008, in which Parks stated under penalty of perjury that the Campaign owed respondent $54,924.76; and (5) that the Campaign filed an updated finance form on August 4, 2009, in which Parks stated under oath that the Campaign owed respondent "$49,924.76, the exact amount sought in this lawsuit." In addition, respondent contended there was no triable issue of material fact on the breach of contract claim because Wesson and Westall had ostensible authority to enter into the oral contract.

The trial court granted the motion for summary judgment as to the Campaign only, awarding damages in the amount of $49,924.76, plus applicable interest. The court denied summary judgment on the claims against Parks, as "there was a triable issue of material fact as to whether Defendant [Parks] had

notice of the contract." In the subsequent statement of decision, the trial court explained its decision:

"Prior to trial, the Court granted Plaintiff's Motion for Summary Judgment against Defendant [Campaign], finding that there were no genuine issues of material fact as to either of the operative causes of action: breach of contract and account stated. The Court determined that there was no genuine issue of a material fact as to either the services that were to be provided or the payment that would be made for such services under that contract. Thus, Plaintiff agreed to provide robocalls and other telephone calling services for the campaign, and the campaign agreed to pay Plaintiff at agreed rates. In connection with that motion, Plaintiff submitted evidence that demonstrated that, in spring 2008[,] Herb Wesson III, the campaign's Field Director/Campaign Manager, and Andrew Westall, a campaign staff member, had entered into the contract with Plaintiff on behalf of the campaign. Defendants disputed whether a contract was formed, arguing that Wesson and Westall each lacked authority to enter into a contract on behalf of the campaign. In ruling on that motion, the Court found that there was no genuine issue of material fact as to the claims against the unincorporated entity. That finding turned on two factors: First, that the unincorporated entity was responsible for giving the impression that those who contracted with the Plaintiff on behalf of the entity had authority, thereby creating ostensible authority; and, second, that Plaintiff's claims for an account stated succeeded because the entity did not dispute them for a long time, long enough that, as a matter of law, they became due and owing independent of the original contract."

C. *Bench Trial*

The court held a bench trial on the issue of Parks's liability for the Campaign's indebtedness to respondent on November 29 and 30, 2010. The first

witness was Wesson. The trial court found him "credible as to certain core elements of his testimony." Wesson testified he had worked on over 20 campaigns, 12 as the field director. He had used the services of respondent in some of those previous campaigns. He served as the campaign manager/field director of Parks's campaign for Supervisor representing the second supervisorial district. He wrote the field plan for contacting the voters and then worked to execute it. Wesson testified he did not have authority to enter into a contract that required the payment of money; he needed the approval of Parks or of Parks's son.

Wesson testified Parks was involved on a daily basis in the operations of the campaign. Wesson testified that it was Parks's idea to reach out to voters in the western part of the district via robocalls. In May 2008, Wesson testified he discussed with Parks various vendors who might make the robocalls, and recommended respondent. He discussed with Parks an estimate for the overall cost of the work by respondent. Parks then told him to "make it happen," which Wesson understood to mean to use respondent's services and proceed with the calls. Thereupon, Wesson e-mailed respondent to say that it should start work.

Wesson authenticated Exhibit 1, a May 11, 2008 e-mail from Parks to Wesson and other supporters about robocalls, which attached robocall scripts and provided names of those whose voices might be used in such calls. Wesson testified he understood the statement in the email to get the scripts "loaded" to mean "to call a number and record your message over the phone, so then your message can be delivered to the voters." Wesson also testified that "Call Center Services provides you with a phone number to call in and a pin number . . . [a]nd then you record your information." Wesson also authenticated an e-mail that provided a robocall script about the increase in stamp prices and the

recommendation to buy "forever stamps." Wesson testified that in May of 2008, he observed Parks reading this script for a robocall recording.

Wesson testified there were some complaints, both by telephone and e-mail, about the robocalls. He discussed these complaints with Parks. Parks told him to remove the complainers' names from the call lists. Respondent produced copies of numerous e-mails signed with Parks's initials, responding to such e-mail complaints. These e-mails, dated May 22, 2008, stated: "So sorry that my message disturbed you. I received your information from the public records file via the voter registration records. I will have your name removed from our files so you will not be disturbed in the future. Thanks again!! [¶] bcp."

Wesson also testified he received some statistical information from respondent about the robocalls. He showed this information to, and discussed it with, Parks. Wesson testified he forwarded invoices from respondent and sent them to the treasurer, Mary Ellen Padilla, and to Parks's son. Wesson also testified that in June 2008, he spoke to Parks concerning respondent's outstanding bills and desire to be paid. Wesson testified that Parks said the payment would be made after the primary.

Westall was the second witness. "[T]he Court found Westall to be an extremely credible witness." Westall testified he had been involved in politics since 1995 and had worked on about 50 political campaigns. He worked on Parks's 2008 campaign at the request of Wesson. Due to the poor language and communication skills of the campaign's in-house phone bankers, he felt there was a need to use robocalls to reach the voters in the west side of the district. He had used the services of respondent previously.

Westall testified he did not speak with Parks regarding respondent Plaintiff by name, but he did tell Parks that an outside vendor was providing services. They

spoke about this on nearly a dozen occasions. He testified he conferred weekly in May 2008 with Parks about automated calls, and he told Parks that the campaign was using a vendor for these calls. Westall also testified that during these weekly meetings, he discussed the data about the call results from respondent with Parks.

Westall testified about his personal knowledge that Parks had made two robocall recordings, one concerning the price of stamps and a second concerning Propositions 98 and 99. An e-mail showed the second recording occurred May 26, 2008. Westall also testified that Parks instructed him on several occasions to obtain audio files from certain celebrities and politicians for use in robocalls. He was able to obtain audio files from many of these individuals.

Parks was the third witness. The trial court found that "there were parts of [his] testimony that were at odds with the testimony" of Wesson and Westall. The court found "the testimony of the witnesses offered by the Plaintiff on these topics was more convincing and more credible."

Parks testified he was actively involved in the management of the campaign. He was the only person with the authority to approve contracts in excess of $500. He agreed there was an issue about voter support in the west side of the district, but said the response to that was to use "Sue Burnside as walkers in that district,"

Parks testified that Wesson came to him on one occasion to get approval for robocalls about "forever stamps." Parks testified Wesson said the robocalls would cost "a couple of thousand dollars," and that he authorized Wesson to proceed with that particular robocall. Parks testified that Wesson did not identify the vendor or tell him the cost per call. He admitted recording his voice for the use of that robocall; he might also have done a second robocall. He also testified he instructed Wesson to get audio files from other individuals, but claimed that the purpose was

to "get people's voices to be used for either radio or other usage at some point in the future, but not to activate them, just merely accumulate them and stack them."

Parks also testified about the campaign finance form, filed by the campaign after the primary and signed by Padilla and himself under penalty of perjury. Although the form listed respondent's bill for $54,924.76 as an accrued expense for "phone banks" services, Parks testified that at the time it was listed on the form, he had already decided not to pay it. He reached this decision because he was unaware of the debt, had never heard of respondent, was never advised that the campaign was doing any business with respondent, and received inconsistent information about the work being performed by the company. He concluded the bill was "fraudulent." The trial court noted there was no notation on the campaign finance form disputing the amount owed to respondent.

Parks denied having a conversation with Wesson about paying respondent. He admitted the Campaign paid respondent $5,000. Parks claimed he did not authorize the payment and specifically told Padilla not to make the payment, but Padilla mistakenly paid it. Although Padilla was listed as a trial witness, she was not called at trial.

On January 10, 2011, the trial court issued its tentative ruling that Parks was individually liable on respondent's claims. The court issued a proposed statement of decision March 14, 2011. Appellants filed written objections, contending (1) the court's findings were ambiguous as to Parks's knowledge of the particular contract for services between respondent and the Campaign, citing Corporations Code section 18610,[1] and (2) the court's findings omitted discussion about the value of any benefit conferred by the contract.

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[1] Appellants cited California Corporations Code section 18610, which provides: "A member of a nonprofit association is not liable for a contractual

On April 4, 2011, the court issued its 23-page statement of decision, addressing these objections. According to the court, "Parks'[s] personal liability for the debts of the campaign is governed by California Corporations Code section 186[1]0, which applies to claims against a member of a not-for-profit entity. As the parties agree and as stated in their respective post-trial briefs, there is a three-part test under section 186[1]0. The three elements are: (i) a contract; (ii) notice of the contract to the natural person as to whom liability is asserted; and (iii) a benefit to that person from the contract." The court noted that "[t]wo of the three elements -- that there was a contract and that a benefit was provided -- were not genuinely disputed at trial." It concluded that these two elements were "established readily by a preponderance of the evidence." The court explained:

"In so finding, the Court concludes that all of the services that plaintiff provided in connection with the matters presented at the trial were made pursuant to a single contract. To be sure, there was not an integrated writing that set forth all of its terms. However, a preponderance of the evidence clearly established that the campaign agreed that plaintiff would provide services in the form of various robocalls and would be compensated for its work. This is consistent with the testimony that campaigns, including the one at issue in this case, are organic, with decisions about the scope of particular efforts to be made while the campaign is in progress, based on the facts, developments and needs. This contract was the one that is sufficient to meet the terms of Cal. Corp. Code § 18610, which refers to a 'contract,' a 'specific contract,' or a 'contractual obligation.' The preceding conclusion follows notwithstanding the testimony of . . . Parks to the effect that the

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obligation of the association unless one of the following conditions is satisfied: . . . [¶] . . . [¶] (c) With notice of the contract, the member receives a benefit under the contract. Liability under this subdivision is limited to the value of the benefit received."

robocalls were not productive and that their cost was too high. And, it withstands . . . Parks'[s] most recent contention, which is set forth in his objection to the Proposed Statement of Decision, that there was not a specific contract in place. In short, having evaluated all of the evidence as well as the credibility of those who testified about these matters, the Court has found that, a preponderance of the evidence shows that the calls were made after substantial discussions about their potential benefit and that the particular calls and the[ir] contents were determined during the course of the campaign based on discussions between plaintiff and senior campaign staff, who in turn communicated with . . . Parks. This evidence also clearly showed that the amounts charged were appropriate.

"The Court also finds that Plaintiff established that . . . Parks benefitted from the calls. Thus, they were made to assist his campaign, albeit an unsuccessful one. That he and certain members of his staff concluded that robocalls would be of value to the reelection effort is sufficient to establish a benefit to [him]."

On the third element, the court found "by a preponderance of the evidence, that . . . Parks knew or should have known of the contractual agreement with the Plaintiff arranged by senior members of his campaign staff pursuant to which calls were made to potential voters to seek their support. Indeed, there is substantial evidence that shows by a preponderance [of the evidence] that . . . Parks approved of these arrangements and was aware of them while the services were being provided." In support of this determination, the court made the following findings:

"In summary, there is testimony that . . . Parks was very involved in his campaign. There was evidence that sufficient facts were presented to him for him to have asked questions and to have learned more details about the contract between the campaign and the Plaintiff. There were discussions with . . . Parks about the scripts and recordings. He received objections about robocalls which

potential voters had sent. There was . . . Parks'[s] testimony about his own reservations about this method and that his staff members expressed some reservation as well about this method. There is testimony by Wesson that he spoke on 10 occasions to . . . Parks about robocalls. There is evidence of . . .Parks['s] recording of a robocall script using a pin call-in number. There is evidence of . . . Parks'[s] discussion with the staff about the results of, among other things, robocalls. There is evidence that he approved of the $5000 payment and acknowledged the balance that was due after the primary. [¶] Thus, there was more than sufficient evidence to establish, by a preponderance, that . . . Parks had actual and constructive knowledge of the contract with Plaintiff."

On June 3, 2011, judgment in the amount of $49,934.76, plus $10,501.56 interest was entered against Parks and the Campaign, jointly and severally.

D. *Motion for a New Trial*

On June 27, 2011, appellants filed a notice of intention to move for a new trial. On July 7, 2011, appellants filed their motion for a new trial, arguing they were entitled to a new trial pursuant to Code of Civil Procedure section 657, subdivision (4), as they had acquired new evidence that would impeach the testimony of Wesson and Westall. According to a declaration submitted by appellants' counsel, on January 14, 2011, Gabriel Grunspan had contacted Parks's city hall office and "left a message indicating that he (the caller) had read an online article about the case herein and believed that witness Andrew Westall ('Westall') had perjured himself in testifying at Trial." Counsel stated that she contacted Grunspan on January 20, 2011, and as a result, she learned the following information: Grunspan worked for Westall; a year earlier, on January 20, 2010, he "overheard a conversation between Westall and Wesson . . . ."; "Grunspan specifically overheard Wesson telling Westall that there was a 'problem' with the

robocall situation in that he (Westall) was not authorized by Parks to engage Call Center. Wesson emphasized to Westall that, at [the] time [of the] 2008 [campaign], the Parks Campaign was without funds to cover the cost of the robocalls. Furthermore, the fact that Parks told Westall 'to get the recordings done' was not the 'go ahead' to hire Call Center, Inc. Wesson stated 'you still needed to have enough money in the account,' and 'you needed to get [Parks'[s]] approval.' Wesson exclaimed 'we hadn't shown him (Parks) anything!' Wesson's parting comment to Westall was, 'Dude, this is going to go down bad!'"

Appellants admitted the statements contained in their counsel's declaration were hearsay, but argued the evidence was admissible to impeach the trial testimony of Wesson and Westall. The motion did not include a declaration by Grunspan. Appellants explained that although counsel had interviewed Grunspan at least four times between January 2011 and June 2011, "since June 23, 2011, counsel for Defendants ha[d] been unable to contact Grunspan for unknown reasons."

The motion for a new trial argued in the alternative that the decision by the court to impose liability on the basis of ostensible authority was against the law pursuant to Code of Civil Procedure section 657, subdivision (6), as the court failed to evaluate the common law elements to determine the Campaign's liability. Appellants "conceded that the Court's omission does not supplant its ruling that, at a minimum, the Campaign is liable for the debt incurred on the Call Center contract because it found an account stated. However, the fact the Court automatically imposed liability based on the contract to which the Campaign's agent [is] bound [without analyzing the common law rules] is relevant and was prejudicial to its determination at Trial -- i.e., whether the Candidate had knowledge of the contract . . . ."

Respondent opposed the motion, arguing (1) that the motion relied upon inadmissible hearsay, (2) that the hearsay evidence was not newly acquired, as appellants had been in possession of the evidence for months and had not diligently brought it to the court's attention, (3) that the trial court had ruled in its statement of decision that Wesson and Westall had actual authority to enter into the contract, and (4) that the motion did not cite to the court's minutes, which is required when the motion is based on Code of Civil Procedure section 657, subdivision (6). Respondent also noted that the court's ability to rule on the motion was limited as Judge Kronstadt, who presided over the trial, was no longer available to hear the motion for a new trial.[2]

On July 27, 2011, appellants filed a reply, and attached a declaration by Grunspan. Appellants argued that Grunspan's declaration was newly acquired evidence as it could not have been discovered before trial, and contended that Code of Civil Procedure section 658 permitted reliance upon affidavits or minutes to support a motion for a new trial.[3] In his declaration, Grunspan stated:

"On or about January 20, 2010, while helping Westall organize his campaign offices, I was involved in a conversation between Westall and Herb Wesson, III ("Wesson"). . . . In that conversation, I heard Wesson and Westall discussing Westall's engagement of the Call Center, Inc. [*sic*], to conduct robocalls during the 2008 supervisorial campaign of Bernard Parks ("Parks"). I witnessed Wesson expressing his extreme disapproval of Westall in engaging Call Center, Inc. . . .

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[2] The motion was eventually heard by Judge Scheper.

[3] California Code of Civil Procedure section 658 provides that: "When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of Section 657, it must be made upon affidavits; otherwise it must be made on the minutes of the court."

without prior authorization to bind the Campaign. [¶] Specifically, I recall Wesson telling Westall there was a 'problem' with the robocall situation in that he [Westall] was not authorized by Parks to engage Call Center. Wesson emphasized to Westall that, at that time in 2008, the Parks Campaign was without funds to cover the cost of the robocalls. Furthermore, the fact that Parks told Westall 'to get the recordings done' was not the 'go ahead' to hire Call Center, Inc. Wesson stated 'you still needed to have enough money in the account' and 'you needed to get [Parks'[s]] approval.' Wesson exclaimed 'we hadn't shown him (Parks) anything!' Wesson's parting comment to Westall was, 'Dude, this is going to go down bad!' I also recall Westall saying that the 'problem will just go away.'"

Respondent filed an objection to the reply, arguing that Grunspan's declaration was untimely and must be stricken.

According to appellants, on August 8, 2011, "Judge Scheper . . . summarily denied the motion and provided no particular ruling or reasoning other than noting that Grunspan's declaration was considered." Appellants provided no record citation to support this assertion. Appellants included neither the transcript of the hearing nor the minutes showing the denial of their motion for a new trial.

E. *Appeal*

On September 2, 2011, appellants appealed from the June 3, 2011 judgment after court trial. On September 16, 2011, appellants filed a civil case information statement, specifying that they were appealing from the ruling on the summary judgment motion, the June 3, 2011 judgment, and the denial of the motion for a new trial.

DISCUSSION

Appellants contend (1) the trial court erred in granting respondent's motion for summary judgment on the Campaign's liability, (2) the court erred in finding,

after a bench trial, that Parks was individually liable, and (3) the trial court erred in denying appellants' motion for a new trial. We address each contention in turn.

A. *Motion for Summary Judgment*

Appellants contend the trial court erred in finding the Campaign liable on the breach of contract cause of action because the court failed to analyze the "common law elements of ostensible authority . . . before reaching its conclusion." We find no error in the grant of summary judgment.

A party is entitled to summary judgment "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) In ruling on the motion, the court must view the evidence in the light most favorable to the opposing party. "An order granting summary judgment, of course, is reviewed independently." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 860 (*Aguilar*).)

Here, the trial court determined there was no triable issue of material fact as to the Campaign's liability on the breach of contract and the account stated causes of action. On the account stated cause of action, the court found that "Plaintiff's claims for an account stated succeeded because the entity did not dispute them for a long time, long enough that, as a matter of law, they became due and owing independent of the original contract." Appellants have not challenged this determination on appeal. Indeed, appellants previously conceded that the trial court's alleged "failure to apply the common law rules [for liability on the basis of ostensible agency]" "does not supplant its ruling that, at a minimum, the Campaign is liable for the debt incurred on the Call Center contract because it found an account stated." As the account stated cause of action provides an independent basis for the court's grant of summary judgment against the Campaign, we affirm

the trial court's order. (See *Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41 [noting the appellate court is constrained in its review of the propriety of a grant of summary judgment by the contentions raised in appellant's opening brief]; cf. *Tavaglione v. Billings* (1993) 4 Cal.4th 1150, 1157 ["[W]here several counts are tried, a general verdict will be sustained if any one count is supported by substantial evidence and is unaffected by error, despite possible insufficiency of evidence as to the remaining counts."].)

B. *Bench Trial*

Next, appellants contend the trial court erred in determining that Parks was personally liable, because the court's finding that there was a valid oral contract was based on "its earlier, flawed application of ostensible agency." In their reply brief, appellants also challenge the sufficiency of the evidence to support the trial court's ruling, citing Parks's trial testimony that he did not authorize the retention of respondent and was unaware there was a contract. Appellants, however, concede that the trial judge found the contrary testimony by Wesson and Westall "more credible." In their statement of facts, appellants summarized Wesson's and Westall's testimony as follows: "Wesson and Westall both testified at trial that they thought they had authorization to contract with Call Center on behalf of the Campaign." Appellants failed to provide a summary of other testimony and documentary evidence that supported the trial court's decision. As appellants did not provide a fair statement of facts, they have forfeited this claim of error. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

In any event, appellants have not met their burden to show reversible error. "In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court

decision. [Citations.]' [Citation.] In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment. [Citation.]" (*Estate of Young* (2008) 160 Cal.App.4th 62, 75-76.) "The substantial evidence standard of review applies to both express and implied findings of fact made by the court in its statement of decision. [Citation.]" (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 501.)

Appellants contend we should independently review the trial court's judgment "in light of Parks' trial testimony, the documentary evidence presented, and the discovery of material evidence in Grunspan [*sic*] that goes to the threshold issue in this case." We are not persuaded. First, although appellants suggest we should reweigh the evidence in light of Grunspan's proffered testimony, they do not explain why this impeachment evidence would heighten the appellate standard of review. Moreover, Grunspan's testimony was not presented to the trial court before it issued its statement of decision. In determining whether there is error, we are generally limited to the evidence that was before the trial court when it made its decision. (See *People v. Jacinto* (2010) 49 Cal.4th 263, 272, fn. 5 [normally, when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered].) Finally, appellants cite no statutory authority or case law supporting de novo review. (See *Diamond Springs Lime Co. v. American River Constructors*

(1971) 16 Cal.App.3d 581, 608 [point raised without legal analysis or authority is forfeited].)

Here, under the usual deferential standard of review for findings after a bench trial, we conclude the trial court's decision was supported by substantial evidence. The court found there was a contract because "the campaign agreed that plaintiff would provide services in the form of various robocalls and would be compensated for its work." This determination was amply supported by the declarations of Schwenkmeyer, Wesson, and Westall, and the testimony at trial. Specifically, Wesson testified he obtained approval from Parks to engage respondent and to use their services. Parks himself admitted he approved the robocall about "forever stamps." In addition, the court determined the contract benefitted Parks. Appellants do not challenge this determination on appeal, and it is supported by substantial evidence that the senior campaign staff believed the robocalls and live phoning would allow the campaign to reach voters in the west side of the supervisorial district. The court also credited Wesson's testimony that it was Parks's idea to use robocalls.

Finally, the trial court found that Parks had actual and constructive knowledge of the contract. This determination too was supported by substantial evidence in the record. The court found "[t]here is testimony by Wesson that he spoke on 10 occasions to . . . Parks about robocalls. There is evidence of . . . Parks['s] recording of a robocall script using a pin call-in number. There is evidence of . . . Parks'[s] discussions with the staff about the results of, among other things, robocalls. There is evidence that he approved of the $5000 payment and acknowledged the balance that was due after the primary." We cannot credit Parks's contrary testimony, as we are constrained from making credibility determinations, reweighing the evidence, and drawing unfavorable inferences.

Accordingly, we affirm the trial court's determination that Parks was personally liable to respondent.

C. *Motion for a New Trial*

Finally, appellants contend the court erred in denying their motion for a new trial based on allegedly newly discovered impeachment evidence of Grunspan. We disagree.

"Generally, rulings on new trial motions are reviewed for an abuse of discretion. [Citation.]" (*Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1176, citing *Aguilar, supra*, 25 Cal.4th at p. 859.)[4] "The absence of a record concerning what actually occurred at the hearing precludes a determination that the court abused its discretion. [Citations.] As the party challenging a discretionary ruling, [appellants] had an affirmative obligation to provide an adequate record so that we could assess whether the court abused its discretion. [Citation.]" (*Wagner v. Wagn*er (2008) 162 Cal.App.4th 249, 259.) As stated, appellants have failed to provide this court with a transcript of the hearing on the motion or a copy of the court's minute order denying the motion. All that has been provided are: (1) a notation on the civil case information statement that the motion was denied August 8, 2011, (2) two statements in the opening brief that the trial court denied the motion, without a record citation, and (3) two statements

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[4] Appellants request this court conduct an independent review of the trial court's denial of a motion for a new trial, but cite a case holding the standard of review is abuse of discretion. (See *ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832 ["We will not disturb the trial court's determination of a motion for a new trial unless the court has abused its discretion. [Citation.] When the court has denied a motion for a new trial, however, we must determine whether the court abused its discretion by examining the entire record and making an independent assessment of whether there were grounds for granting the motion. [Citation.]"].) Accordingly, we have reviewed the trial court's decision to deny the motion for an abuse of discretion.

in their reply brief that the court "summarily denied the motion and provided no particular ruling or reasoning other than noting that Grunspan's declaration was considered," again without a record citation.[5] Accordingly, appellants have forfeited this argument on appeal.

Even had appellants preserved the issue for review, we would find no reversible error. Appellants sought a new trial on the basis of "[n]ewly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial." (Code Civ. Proc., § 657(4).) "Assuming the evidence referred to by defendant was newly discovered and he could not have discovered and produced it at trial with reasonable diligence, there must still be a showing that such evidence also is material in the sense that it is likely to produce a different result." (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 138.)

Initially, we note the trial court could have stricken Grunspan's declaration, as appellants submitted it more than 10 days after filing their notice of intention to move for a new trial, in violation of Code of Civil Procedure section 659a. In addition, appellants failed to request additional time to file the declaration. Appellants claim, without citation to the record, that the trial court considered Grunspan's untimely declaration. Even assuming that this is true, there was no error in denying the motion, as appellants cannot show materiality.

First, it has been held that "newly discovered evidence to impeach or discredit a witness, even when discovered shortly after trial and made the basis of a motion for new trial, is not sufficient to require granting of a new trial." (*Lubeck v.*

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[5] We note that in addition to failing to comply with California Rules of Court, rule 8.204(a), by not including a record citation, appellants also failed to comply with rule 8.204(b)(7), by failing to number the pages of their opening brief.

Lopes (1967) 254 Cal.App.2d 63, 68.) Moreover, Grunspan's testimony contradicted a version of events never given at trial, by suggesting that Westall engaged respondent to make robocalls based upon Parks's verbal statement to Westall to "get it done." In fact, Wesson testified Parks told *him* to "make it happen," and Wesson then proceeded to talk with Westall and respondent. The declaration would likely have been viewed as an attempt to contradict a version of events reported online, but not in fact testified to at trial, and the judge would have been entitled to view the declaration with skepticism.[6]

Finally, even if the court had "believed" the declaration, it would not have contradicted the myriad pieces of circumstantial evidence tending to show Parks knew of the contractual obligation. They include: (1) his own conduct in twice recording robocalls; (2) his May 11, 2008 email to Wesson and other supporters requesting that robocall scripts be "loaded," confirming his intent to proceed with the robocalls; (3) his instruction to Westall to obtain audio files from certain celebrities and politicians for use in robocalls; (4) his authorization of a $5,000 payment to respondent for its services; and (5) his acknowledgment under penalty of perjury in governmental filings that the full amount of respondent's outstanding invoice was owed. In short, on the record before it, the court had ample basis to find Grunspan's testimony would not likely have changed the outcome.

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[6] Appellants' failure to produce Grunspan's testimony earlier also invites skepticism. Grunspan first contacted appellants' counsel on January 14, 2011, but the trial court did not issue its proposed statement of decision until March 14, 2011, and its final statement of decision until April 4, 2011. Judgment was not entered until June 3, 2011. During this time period, appellants could have moved to reopen the case to permit the court to consider Grunspan's testimony, but did not do so.

Appellants have failed to show an abuse of discretion in the denial of their motion for a new trial.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.